

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT TACOMA**

CESAR ZAVALA-VASQUEZ and
CARMEN PEREZ, husband and wife,

Plaintiffs,

V.

ALLSTATE INDEMNITY COMPANY,

Defendant.

CASE NO. C8-5673BHS

**ORDER DENYING
DEFENDANT'S MOTION TO
COMPEL DISCOVERY
PURSUANT TO FRCP 37**

This matter comes before the Court on Defendant's Motion to Compel Discovery Pursuant to FRCP 37. Dkt. 44. The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

I. FACTUAL AND PROCEDURAL BACKGROUND

On September 29, 2008, Plaintiffs Cesar Zavala-Vasquez and Carmen Perez filed a complaint against Defendant Allstate Indemnity Company in the Superior Court of Washington for Pierce County. Dkt. 1 at 1. On November 7, 2008, Defendant removed the action to this Court. *Id.*

In their complaint, Plaintiffs allege that Defendant breached an insurance contract, acted in bad faith, violated both the Washington Consumer Protection Act and the Washington Insurance Fair Conduct Act, and inflicted emotional distress. *Id.* at 8-11.

On August 16, 2009, Defendant filed a Motion to Compel Discovery Pursuant to FRCP 37. Dkt. 44. On September 1, 2009, Plaintiffs responded and included supplemental discovery responses. Dkt. 49. On September 3, 2009, Defendant replied. Dkt. 51. Defendant claims that Plaintiffs' supplemental responses are untimely and inadequate and that Plaintiffs have failed to provide the following:

- Plaintiffs' final inventory;
 - Complete contact information for the Plaintiffs' past employers;

- 1 • Complete financial records regarding Mr. Zavala's independent
2 contracting work; and
2 • Plaintiffs' complete DSHS records.

3 *Id.* at 1.

4 With regard to Plaintiffs' DSHS records, Defendant claims that it "requested that
5 the Plaintiffs provide their DSHS records or sign an authorization to allow [Defendant] to
6 obtain them." Dkt. 44 at 4. Defendant's request reads as follows:

7 We would like to obtain copies of your clients' DSHS file. Enclosed
8 is a stipulation, as well as authorizations in this regard. Please have you and
9 your clients sign where indicated and return to me on or before July 31,
obtain permission from the court.

10 Dkt. 45, Declaration of Rory Leid, Exh. G. Defendant also claims that Plaintiffs did not
11 object to the request or assert any privilege as to the requested material. Dkt. 44 at 6.

12 II. DISCUSSION

13 A party may serve a request for production for material "in the responding party's
14 possession, custody, or control." Fed. R. Civ. P. 34(a)(1). "The party to whom the
15 request is directed must respond in writing within 30 days after being served." Fed. R.
16 Civ. P 34(b)(2). If a the responding party fails to comply with the request for production,
17 the requesting party may move the Court for an order compelling production. Fed. R.
18 Civ. P. 37.

19 In this case, Plaintiffs claim that they have produced all information regarding the
20 personal property that was subject to loss (Dkt. 49 at 5), all information regarding their
21 employment histories for the last five years (*Id.* at 2-3), and all information regarding
22 their business and financial information (*Id.* at 3). Therefore, the Court denies
23 Defendants motion as to this material because there is no relief to be granted.

24 With regard to Plaintiffs' DSHS records, Plaintiffs argue that they have turned
25 over all documents that are in their possession, Defendants have not properly requested
26 the information, and Plaintiffs should "not be required to waive any rights they may have,

1 concerning health insurance information, under HIPPA, without a specific discovery
2 request." *Id.* at 4. Plaintiffs have failed to cite any authority for either of these positions.

3 In *Clark v. Vega Wholesale Inc.*, 181 F.R.D. 470 (D. Nev. 1998), the court held
4 that the "relationship between the Plaintiff and her doctor is not sufficient to establish
5 control." *Id.* at 472. The court explained its reasoning as follows:

6 Defendants can secure copies of the requested documents from the
7 custodian of the records as readily as the Plaintiff. Proper use of the Federal
8 Rules of Civil Procedure will allow for production of the medical records in
9 the possession of physicians, hospitals, and other medical care providers.
10 See *Neal v. Boulder*, [142 F.R.D. 325, 327 (D.Colo.1992)]; *see generally*
11 *Estate of Young v. Holmes*, [134 F.R.D. 291, 294 (D.Nev.1991)]. The only
likely impediment to the Defendants' discovery of Plaintiff's medical
records would be a physician-patient privilege. However, there is no federal
physician-patient privilege. Consequently, the Defendants have complete
access to all necessary information through the appropriate discovery
provisions of the Federal Rules of Civil Procedure.

12 *Clark*, 181 F.R.D. at 472. The Court agrees with and adopts this reasoning to the extent
13 that Plaintiffs' DSHS records are not within their control and Defendant has other means
14 of obtaining the information. Therefore, the Court denies Defendant's motion to compel
15 Plaintiffs' DSHS records through Plaintiffs.

16 III. ORDER

17 Therefore, it is hereby

18 **ORDERED** that Defendant's Motion to Compel Discovery Pursuant to FRCP 37
19 (Dkt. 44) is **DENIED**.

20 DATED this 21st day of September, 2008.

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BENJAMIN H. SETTLE
United States District Judge